THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.10842 of 1998
Date: 18-06-2007

Between:
R.Jaya Ram Reddy Petitioner

And

The Director/ Commissioner of Collegiate Education,
Government of Andhra Pradesh,
Hyderabad and others Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.10842 of 1998

ORDER:

1. This writ petition has been instituted seeking a Writ of Mandamus to declare the action of the Commissioner and Director of Collegiate Education, Government of Andhra Pradesh, Hyderabad, in not bringing the petitioner on to the U.G.C. scales of pay of Rs.2200-4000 with effect from 17-11-1989, the date from which the petitioner was working as Lecturer against one of the aided posts sanctioned in the third respondent college.

2. The case of the writ petitioner is that he is fully qualified to be appointed as a Lecturer in commerce having secured his post-graduate degree in commerce. He further asserts that pursuant to the notification taken out by the third respondent college, he participated in the selection process and he was appointed as a Lecturer in commerce by the third respondent on 13-08-1984. Pursuant to which, he joined the services of the third respondent college on 16-08-1984 and ever since then he had been continuously working as a Lecturer in commerce in the third respondent college.

3. The petitioner further asserts that several teaching and non-teaching posts sanctioned to the third respondent college had been admitted to the grant-in-aid by the State Government and against one of those posts Dr. V. Brahmanandam, had been appointed to teach the subject of economics for those students who are prosecuting the B.Com course of study. It is the case of

the writ petitioner that Dr.V. Brahmanandam had solicited permission of the third respondent college and obtained leave of absence and lien on his post on 17-11-1989 for a period of two years to enable him to join the services of the Osmania University. The third respondent college had granted lien in favour of Dr. V.Brahmanandam for a period of two years and since Dr. Brahmanandam has not returned from the services of the Osmania University upon completion of the two year tenure, his lien has been terminated and thus created a vacant post of Lecturer. The college management solicited permission of the Commissioner and Director, Collegiate Education to bring on the name of the writ petitioner against that vacancy so that he can be paid salary and allowances by virtue of the grant to be released by the State. The proposal in this regard forwarded by the third respondent college on 21st September,1991 has been turned down essentially on the ground that the vacancy caused due to the leave of absence granted to Dr. Brahmanandam cannot be construed as a regular vacancy.

4. Be that as it may, this issue has been dealt with by the State Government and the State Government had passed orders through their G.O.Rt.No. 2202 dated 23-12-1996 ratifying the action of the management of the third respondent college in appointing the writ petitioner as a Lecturer in commerce on 16-08-1984 without following the selection procedure prescribed by the State Government in their G.O.Ms.No. 905, Education Department, dated 21-09-1976. By the same order, the State Government also authorized the Commissioner of Collegiate Education to approve the appointment of the writ petitioner and admit him to grant-in-aid against the aided vacant post with monetary benefit from the date of issue of the Government Order. In pursuance

thereof, the Commissioner of Collegiate Education had ordered approval of the appointment of the writ petitioner and brought him on to the U.G.C scales of pay of Rs.2200-4000 from the date on which the lien of Dr.M.Srinivas, Lecturer in commerce has been terminated. It is not in dispute that the lien of Dr.Srinivas in the third respondent college came to be terminated with effect from 01-10-1993. Thus the writ petitioner herein got his appointment approved and consequently brought over to the pattern of grant-in-aid by the State with effect from 01-10-1993.

5. The grievance therefore entertained by the writ petitioner is that instead of approving and brining him over to the U.G.C scales of pay pattern coupled with grant being released with effect from 17-11-1991, the date on which Dr. Brahmanandam had completed his tenure of lien of two years, the Commissioner of Collegiate Education had brought him on to the approved list against the vacancy caused due to the termination of lien of Dr.Srinivas with effect from 01-10-1993. Thus for nearly two year period the writ petitioner has been denied the benefit of receiving his pay by way of grant to be released by the State.

6. The learned counsel for the writ petitioner has strenuously contended that there is no dispute on account of the fact that Dr.Brahmanandam had been accorded lien for a period of two years commencing from 17-11-1989 to enable him to join the services of the Osmania University and the two year period had come to end on 17-11-1991 and the fact remains that the management of the third respondent college has also terminated the lien of Sri Brahmanandam as he has not returned and resumed the services in the third respondent college as Lecturer. Therefore, the orders passed by the State Government in their G.O.Rt.No.2202 dated 23-12-1996 have been misconstrued by the

Commissioner and Director of Collegiate Education who unnecessarily linked up his case to the date on which the lien of yet another Lecturer Dr.Srinivas has been terminated by the third respondent college on 01-10-1993.

7. The learned Assistant Government Pleader for Higher Education had contended that as to whether the lien of Dr. Brahmanandam has been terminated actually on 17-11-1991 is a debatable aspect. But at any rate, the State Government had shown compassion and sympathy towards the cause of the writ petitioner and approved his appointment in spite of the third respondent college not following the selection procedure contemplated by G.O.Ms.No.905, Education, dated 21-09-1976. Therefore, in the absence of any clear material vouching for the termination of the lien of Dr. Brahmanandam by the third respondent college on 17-11-1991, the orders passed by the Commissioner of Collegiate Education bringing the writ petitioner on to the U.G.C. pattern of scales of pay and admitting him to grant- in -aid with effect from 01-10-1993 is unexceptionable.

8. The essential facts which are not in dispute in this case are:

i. That the writ petitioner started discharging the functions as a Lecturer in commerce in the third respondent college on and from 16-08-1984 .

ii. Dr. Brahmanandam solicited and was granted lien for a period of two years commencing from 17-11-1989 and the said two year period came to an end by 17-11-1991.

iii. Yet another Lecturer Dr.Srinivas has got his lien terminated by the third respondent college with effect from 01-10-1993.

9. But however, what the learned counsel for the writ petitioner could urge

before me is that sometime during March,1993, pursuant to certain enquiries made by the Osmania University, the third respondent college had in no uncertain terms communicated that the lien of Dr. Brahmanandam Lecturer in economics of the college had been terminated with effect from 17-11-1991 and this fact can be taken note of for the purpose of initiating the necessary action by the Commissioner of the Collegiate Education to comply with the directions issued by the State Government in their G.O.RT. No.2202 dated 23-12-1996.

10. In the instant case, the State Government has taken note of the fact that the third respondent college had not followed the due procedure prescribed through their G.O.Ms.No.905 Education, dated 21-09-1976 for conducting the selections and appointment of the writ petitioner as a Lecturer on 16-08-1984. Consequently till such time the State Government approved or ratified this action of the third respondent not following the due selection procedure, there is no way that the appointment of the writ petitioner could have been approved by the Commissioner. Since the State Government is the funding agency, it is entitled to prescribe appropriately designed selection procedures and other regulatory mechanisms to ensure that it's funds are put to the most effective use and reach the most efficient and eligible. Therefore, the selection and appointments of Lecturers in colleges is sought to be regulated and consequently the detailed procedure has been prescribed by the State through G.O.Ms.No.905, Education, dated 21-09-1976 to be followed by all the managements. This procedure is only to ensure that all suitable and eligible candidates receive a fair and adequate consideration at the time of selections and that the best amongst them get eventually selected and appointed as Lecturers in various colleges to whom ultimately, the State fund has got to be expended towards their salary and allowances. Apart from this procedure not

being followed in the instant case, the Commissioner of Collegiate Education did not have adequate material before him to come to a firm conclusion that the third respondent college has terminated the lien of Dr. Brahmanandam on 17-11-1991 itself. It is no doubt true that in the communication addressed to the Osmania University some time during March,1993, the third respondent college has unmistakably indicated that the lien of Dr. Brahmanandam had been terminated with effect from 17-11-1991, the date on which he completed the approved two year period of his leave. It is one thing to say that the lien of Dr. Brahmanandam has been terminated with effect from 17-11-1991, while it is altogether a different thing to assert that it has been so terminated on 17-11-1991. Therefore, in the absence of any concrete material that the third respondent college has actually and lawfully terminated the lien of Dr.Brahmanandam on 17-11-1991 paving the way for a vacancy of Lecturer in commerce against which the case of the writ petitioner can be considered for approval and for admission to grant-in-aid, the action of the Commissioner taking into account the clear vacancy of Dr.Srinivas cannot be termed as contrary to the directions issued by the State Government in their G.O.Rt. 2202. In these set of circumstances, it will be difficult to describe or characterize the orders of the Commissioner of Collegiate Education either as arbitrary or contrary to the approval sanctioned by the State Government through their G.O.Ms.No2202 dated 23-12-1996. For these reasons, I do not consider any merit in the contentions canvassed on behalf of the writ petitioner and therefore, the writ petition is dismissed, but however, without costs.

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NOOTY RAMAMOHANA RAO,J

18-06-2007

Stp